Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte KAZUHIKO AMANO

Appeal No. 2000-0194
Application No. 08/774,126

ON BRIEF

Before LALL, LEVY, and BLANKENSHIP, Administrative Patent Judges.

LALL, Administrative Patent Judge.

## DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 20 and 21, the only pending claims in the application.

The disclosed invention is related to watches, but more particularly to watches that display information in addition to

just time and specifically watches that display life rhythms. A calculation unit first calculates the time of sunrise and sunset. It makes such calculation on the basis of latitude, longitude and deviation from standard time stored in memory of a computer. Once it calculates the time of sunrise and sundown for a particular geographical location and date, the calculation unit then divides into three equal parts the time period from sunrise to sundown. The three equal parts represent the three life rhythms Kapha, Pitta and Vata, for example, which are represented by three different colors. Then, based upon the present time, the calculation unit sends a control signal to the display such that it displays the appropriate colors with the appropriate borders and boundaries. In other words, a means or panel for displaying the time period of a life rhythm according to the present invention requires a determination of display color boundaries. The display of these color boundaries changes with a change in geographical location and whether it is daytime or nighttime. When changing the geographical region for which time is to be displayed, a bezel ring is rotated to the position in which the marker on the bezel ring points to the selected geographical region. The amount of rotation is measured by an

encoder on the bezel ring and is read into the computer. The computer rotates the character panel in the opposite direction to the bezel ring through the same angle of rotation as that of the bezel ring. As a result, right after the rotation of the bezel ring, the life rhythm time prior to rotation is maintained. After a set interval of time the computer rotates the character panel in the same direction and through the same angle of rotation as the rotation of the above-mentioned bezel ring. In this way the display of life rhythm time according to the character panel and the capital "I" mark on the bezel ring gradually approaches the life rhythm time of the geographical region set by the bezel ring. A further understanding of the invention can be achieved by reading the following claim.

20. A watch, comprising means for displaying the standard time corresponding to a designated geographical region and means for displaying the time period of a life rhythm corresponding to the present time, means for designating a geographical region and means, responsive to said geographical designation means, for gradually shifting, over a set time period, said means for displaying the time period of a life rhythm to a life rhythm display corresponding to the designated region.

The examiner relies on the following references:

| | | |
|---|---|---|
| Slaugh | 2,794,314 | Jun. 4, 1957 |
| Haydon | 2,976,674 | Mar. 28, 1961 |

Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as been unpatentable over either Slaugh or Haydon.

Rather than repeat the arguments of the appellant and the examiner, we make reference to the briefs[1] and the answer for respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and disputing arguments. We have, likewise, reviewed the appellant's argument set forth in the briefs.

We reverse.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d

[1] A reply brief was filed on June 14, 1999 as paper number 21. The entry of this paper was noted by the examiner on June 30, 1999, see paper number 22.

1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192(a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobviousness distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967)("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even of it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

In rejecting claims 20 and 21 (answer at page 3), the examiner asserts that "it would have been obvious . . . to adapt either of Slaugh or Hayden [sic, Haydon] to include the encoder as this is a well known feature in the art to use the bezel [ring] to rotate an element . . . and to locate the panel of center is known in the art and as such an obvious modification." Appellant, after discussing each of the references, Slaugh and Haydon, (brief at page to 5) argues that

> Even more evident is *Slaugh* and *Haydon's* failure to disclose or suggest a means for designating a geographical region corresponding or equivalent to the bezel ring 23 with a marker that is rotated to point to a selected geographical region on ring 26. Further *Slaugh* and *Haydon* fail to disclose or suggest a means, responsive to the designation of a geographical region, for gradually shifting over a set time interval the means for displaying (or circular panel) to a display corresponding to the designated region. *Slaugh* and *Haydon* fail to disclose or suggest a structure or equivalent to **CPU-IC 40** of the present invention, which gradually shifts the display over a set time to correspond to a designated region.

The examiner responds, answer at page 4, that "[a]s noted above, a minute or a second could be used as a life rhythm. [For example,] consider timing the contractions of a pregnant woman." We agree with the examiner that any minute or a second on a time clock can be considered to correspond to some life rhythm of a

being. Furthermore, we agree with the examiner that 27, 28 and 29 in Slaugh can be considered as the designating means for a designated geographical region. However, the examiner has not shown the claimed means, responsive to such designated geographical means, for gradually shifting, over a set time period, the means for displaying the time period of a life rythm to match a life rythm corresponding to the designated region. To simply allege that it would have been obvious to include such means in Slaugh or Haydon, as this was a well known feature in the art, is not sufficient for the examiner to establish a prima facie case of obviousness. Therefore, we do not sustain the obviousness rejection of claims 20 and 21 over either Slaugh or Haydon.

The decision of the examiner under 35 U.S.C. § 103 is reversed.

REVERSED

| | | |
|---|---|---|
| PARSHOTAM S. LALL<br>Administrative Patent Judge | ) | |
| STUART S. LEVY<br>Administrative Patent Judge | ) | BOARD OF PATENT APPEALS AND INTERFERENCES |
| HOWARD B. BLANKENSHIP<br>Administrative Patent Judge | ) | |

LPS/lp

EPSON RESEARCH AND DEVELOPMENT INC.
INTELLECTUAL PROPERTY DEPT
150 RIVER OAKS PARKWAY, SUITE 225
SAN JOSE, CA  95134

*Letty*

JUDGE LALL

APPEAL NO. 2000-0194

APPLICATION NO. 08/774,126

APJ LALL

APJ LEVY

APJ BLANKENSHIP

DECISION: **REVERSED**

**PREPARED**: Sep 26, 2002

**OB/HD**

**PALM**

**ACTS 2**

**DISK (FOIA)**

**REPORT**

**BOOK**